

# COUNTY OF YORK

## MEMORANDUM

**DATE:** March 31, 2003 (BOS Mtg. 4/20/04)

**TO:** York County Board of Supervisors

**FROM:** James O. McReynolds, County Administrator

**SUBJECT:** Refund of Taxes Erroneously Assessed

Section 58.1-3980 of the Code of Virginia provides that any taxpayer may apply to the appropriate assessing officer for refund of taxes paid as a result of an erroneous assessment. The application must be made within three years from the last day of the tax year for which the assessment was made. Therefore, an applicant may seek recovery of taxes for the current year and for the three prior tax years. If a penalty or interest has been paid by the taxpayer, that may be recovered also. The consent of the County Attorney to the refund must be obtained as required by Code § 58.1-3981. Any refund in excess of \$2,500 must be approved by the Board. Two such requests are attached for your approval.

Williamsburg Plantation Inc. has constructed a timeshare resort in James City County, where it is classified for BPOL taxation purposes as a contractor. For years, James City County has levied the BPOL tax on all of Williamsburg Plantation Inc.'s gross receipts. As part of its timeshare business, Williamsburg Plantation Inc. operates two telemarketing offices in York County, from which telemarketers seek to convince potential customers to tour the timeshare facilities, for which privilege the potential customer pays a deposit which is refunded once the visit actually takes place. With the exception of a few sales of vacation packages, no sales are consummated at either telemarketing location, the majority of such sales being finalized in James City County. For a number of years, the County has been assessing the BPOL tax against the two telemarketing offices, measuring the taxable gross receipts in part by the salaries and other costs expended to run the two offices, and also on a mistaken understanding of the volume of sales being completed at the York County locations. As a result, Williamsburg Plantation Inc. was paying BPOL taxes to two jurisdictions on an amount in excess of 100% of their gross proceeds. Although it is quite possible for a contractor to be obligated to pay BPOL taxes to more than one jurisdiction, it was ultimately determined that Williamsburg Plantation Inc. actually derived only minimal revenues at either York County location, and so there were few gross proceeds available to be taxed. Consequently, the Commissioner of the Revenue and the Treasurer believe that the taxpayer should be refunded the larger part of the BPOL taxes collected in tax years 2001 through 2003. The attached resolution will authorize the over collection of BPOL taxes to be refunded in the total amount of \$13,487.37, including interest.

Board of Supervisors

March 31, 2004

Page 2

Also attached is a request from Hourigan Construction Corp. for a refund in the amount of \$3,296.57 for business license taxes for the tax year 2003, due to the company's over reporting of gross receipts.

Please note the certification by the Treasurer as to payment of the taxes for which the refunds are sought and the consent by the County Attorney for the refunds or the partial refunds permitted by law. Virginia Code § 58.1-3981 requires that the Board direct the Treasurer to make the refund after these prerequisites are satisfied. Proposed Resolution R04-68 directs the Treasurer to make the refunds.

Barnett/3440:swb

Attachments

- Request for Tax Refund by Williamsburg Plantation, Inc. and Hourigan Construction Corp.
- Proposed Resolution R04-68